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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

JUNE TEECHER,

Plaintiff and Appellant,

v.

THE BASCOM GROUP, LLC, et al.,

Defendants and Respondents.

B201755

(Los Angeles County  
Super. Ct. No. LC071688)

APPEAL from a judgment of the Superior Court of Los Angeles County,  
James A. Kaddo, Judge. Reversed with directions.

June Teecher, in pro. per., for Plaintiff and Appellant.

Early, Maslach & Van Dueck, Jason S. Wilson; Greines, Martin, Stein &  
Richland and Robert A. Olson for Defendants and Respondents The Bascom Group,  
LLC, and Magnolia Park Apartments.

Treacy & Keidser, Philip Treacy and Kari A. Keidser for Defendant and  
Respondent Commercial Services Building, Inc.

Bradley & Gmelich, Thomas P. Gmelich and Lena J. Marderosian for Defendant  
and Respondent Plantasia, Inc.

June Teecher appeals the dismissal of her complaint against four defendants after the sustaining of demurrers without leave to amend. The defendants are The Bascom Group, LLC (Bascom), owner of the apartment building where she resides; Magnolia Park Apartments (Magnolia); Commercial Services, Inc. (Commercial), a general contractor; and Plantasia, Inc. (Plantasia), a landscape contractor. Teecher alleges in her complaint that the defendants, in the course of construction and landscaping work, caused her personal injury and damage to her personal property. The trial court sustained the demurrers based on the two-year statute of limitations for personal injury actions (Code Civ. Proc., § 335.1).

Teecher's principal contention on appeal is that each of the three counts alleged in her complaint alleges damage to personal property as well as personal injury, so the two-year statute of limitations for personal injury cannot bar any count in its entirety. We agree and therefore conclude that the sustaining of the demurrers was error.

### ***FACTUAL AND PROCEDURAL BACKGROUND***

#### ***1. Original Complaint and Sustaining of Demurrers***

Teecher filed a complaint against the defendants in June 2005, alleging that the defendants performed construction and landscaping work on the premises from June 8, 2002, to September 8, 2002. She alleged that the defendants "jumped over plaintiff's fence onto her patio, broke and destroyed the personal property on said patio, barricaded her entry and exit in and to her apartment, [and] cut limbs of 60 foot trees to crash down onto plaintiff's premises, destroying further personal property and causing repeated injuries to Plaintiff." She further alleged that the defendants converted her personal

property for their own use, sprayed hazardous chemicals into her apartment and onto her belongings, and “blew cement and other toxic dust and dirt into plaintiff’s apartment.” Her Judicial Council form complaint included three counts based on these allegations, designated as counts for “premises liability,” “intentional tort,” and “general negligence” (capitalization omitted). She sought compensatory and punitive damages.

Bascom, Magnolia, and Plantasia demurred to the complaint on the grounds of failure to state a cause of action and uncertainty. They also moved to strike the punitive damages allegations. The defendants argued, among other things, that the claims for personal injury were barred by the two-year statute of limitations of Code of Civil Procedure section 335.1. The trial court sustained the demurrers to each count with leave to amend “for the reasons set forth in the moving papers,” and took the motions to strike off calendar.

## *2. First Amended Complaint and Sustaining of Demurrers*

Teecher filed a first amended complaint in October 2006, alleging the defendants’ purported acts of misconduct, her personal injuries and the dates when she first became aware of those injuries, and her property damage. The defendants demurred to the complaint on the grounds of failure to state a cause of action and uncertainty. They also moved to strike the punitive damages allegations. The trial court concluded that the entire complaint was barred by the two-year statute of limitations of Code of Civil Procedure section 335.1, absent proper allegations of delayed discovery. The court concluded further that the first count for “premises liability” was uncertain as to Plantasia because it failed to allege misconduct by Plantasia or a basis for liability for

the acts of other defendants. The court sustained the demurrers to each count with leave to amend and took the motions to strike off calendar.

3. *Second Amended Complaint*

Teecher filed a second amended complaint in March 2007, alleging counts for (1) premises liability, (2) general negligence, and (3) intentional tort. She alleges in her first count that the defendants, while performing construction and landscaping work beginning on June 8, 2002, negligently caused tree limbs to fall onto her patio, breaking her foot and destroying her personal property; sandblasted and blew hazardous materials into her apartment, causing severe and permanent injury to her respiratory system and destroying her personal property; and sprayed hazardous chemicals into her apartment, causing severe and permanent injury to her respiratory system. She alleges that at the time the tree limbs fell on her foot on June 8, 2002, she believed that only her toes were broken and that there was no treatment for broken toes, and that she reasonably did not discover that her foot was broken until she was treated for a twisted ankle in September 2003. She also alleges that she previously had suffered from asthma, that the defendants' conduct exacerbated her asthma, and that she reasonably did not discover that the defendants' conduct caused her to develop emphysema until she was diagnosed with the disease in September 2003.

Teecher repeats the same allegations in her second count for general negligence. She also alleges that Commercial and Plantasia, acting as agents for the other defendants, "jackhammered and sandblasted toxic and hazardous materials, as well as

dust and debris,” causing severe and permanent injury to her respiratory system and destroying her personal property.

Teecher alleges the same facts in her third count for intentional tort, but alleges that the defendants’ misconduct was intentional. She alleges that, “[w]hile gasping for air,” she pleaded with Bascom and Commercial to stop spraying hazardous chemicals into her apartment, but her pleas were ignored. She also alleges that she pleaded with Commercial and Plantasia to stop jackhammering and sandblasting hazardous materials and informed them of her asthmatic condition, and that they ignored her pleas. She alleges further that on June 8, 2002, a Plantasia worker jumped over her fence into her patio, asked her to leave but she refused, and then proceeded to cut tree limbs causing them to fall into her patio, destroying her personal property and breaking her foot.

4. *Demurrers to Second Amended Complaint*

Commercial and Plantasia separately demurred to each count alleged in the second amended complaint on the grounds of failure to state a cause of action and uncertainty. They also moved to strike the punitive damages allegations. They argued that the personal injury claims were barred by the two-year statutes of limitations of Code of Civil Procedure sections 335.1 and 340.8, subdivision (a) and that Teecher had failed to plead facts sufficient to establish delayed discovery. They also argued that the complaint was uncertain because it failed to specify the alleged wrongful acts of those defendants.

Bascom and Magnolia jointly demurred to only the third count in the second amended complaint on the grounds of failure to state a cause of action and uncertainty.

They argued that the third count was barred by the two-year statute of limitations of Code of Civil Procedure section 335.1 to the extent that it alleged damages for personal injury. They conceded, however, that “Plaintiff may have a viable cause of action for property damage claims,” and argued that the third count “convolutes her property damage cause of action with her alleged claim for bodily injury . . . [and] Defendants are unable to determine what causes of action plaintiff is seeking relief.” They also argued that the third count was uncertain because, “Plaintiff merely alleges that Defendants committed an ‘intentional tort,’ without alleging what particular intentional tort was committed.” They also moved to strike the punitive damages allegations and other portions of the complaint.

Teecher filed an opposition to the demurrer by Commercial, but filed no opposition to the other demurrers. The trial court concluded that the complaint was filed more than two years after the alleged misconduct had occurred, that the complaint failed to alleged facts sufficient to establish delayed discovery, and that the complaint therefore was barred by the two-year statute of limitations of Code of Civil Procedure section 335.1. The court stated that it interpreted the demurrer by Bascom and Magnolia “to apply to the entire Second Amended Complaint.” Accordingly, the court sustained the demurrers to each count without leave to amend, took the motions to strike off calendar, and entered a judgment dismissing the entire complaint. Teecher timely appealed the judgment.

## ***CONTENTIONS***

Teecher contends (1) each of the three counts alleged in her complaint alleges damage to personal property as well as personal injury, so the two-year statute of limitations for personal injury cannot bar any count in its entirety; (2) her personal injury claims accrued upon her discovery of the injuries, which occurred less than two years before she filed her complaint; and (3) Bascom and Magnolia demurred to the third count only, so the dismissal of the first and second counts against those defendants was error.

## ***DISCUSSION***

We independently review the ruling on a demurrer and determine de novo whether the complaint alleges facts sufficient to state a cause of action. (*McCall v. PacifiCare of Cal., Inc.* (2001) 25 Cal.4th 412, 415.) We assume the truth of the properly pleaded factual allegations, facts that reasonably can be inferred from those expressly pleaded, and matters of which judicial notice has been taken. (*Schifando v. City of Los Angeles* (2003) 31 Cal.4th 1074, 1081.) We construe the pleading in a reasonable manner and read the allegations in context. (*Ibid.*)

The defendants generally demurred to the personal injury claims based on the statute of limitations for personal injuries (Code Civ. Proc., § 335.1), but did not demur to the property damage claims based on any statute of limitations. Instead, they demurred to the entire complaint on the ground of uncertainty. The order ruling on the demurrers stated that the demurrers were sustained based on Code of Civil Procedure section 335.1, but was silent as to the special ground of uncertainty. We presume that

the court did not rule on the ground of uncertainty, and therefore cannot affirm the judgment on that ground. (*Briscoe v. Reader's Digest Association, Inc.* (1971) 4 Cal.3d 529, 544 (*Briscoe*), overruled on another point in *Gates v. Discovery Communications, Inc.* (2004) 34 Cal.4th 679, 685, 697, fn. 9; see *E. L. White, Inc. v. City of Huntington Beach* (1978) 21 Cal.3d 497, p. 504, fn. 1.)

Teecher alleges that the defendants' misconduct occurred on June 8, 2002, and that she suffered both personal injury and property damage on that date. We conclude that any cause of action seeking damages for personal injury accrued on that date. "A cause of action ordinarily accrues when the wrongful act occurs, the liability arises, and the plaintiff is entitled to prosecute an action. (*Howard Jarvis Taxpayers Assn. v. City of La Habra* (2001) 25 Cal.4th 809, 815 [107 Cal.Rptr.2d 369, 23 P.3d 601]; *Norgart v. Upjohn Co.* (1999) 21 Cal.4th 383, 397 [87 Cal.Rptr.2d 453, 981 P.2d 79].) . . . The common law delayed discovery rule is an exception to the general rule and provides that a cause of action does not accrue until a plaintiff discovers, or reasonably should discover, the cause of action. 'A plaintiff has reason to discover a cause of action when he or she "has reason at least to suspect a factual basis for its elements." [Citations.]' (*Fox v. Ethicon Endo-Surgery, Inc.* (2005) 35 Cal.4th 797, 807 [27 Cal.Rptr.3d 661, 110 P. 3d 914].) The elements that the plaintiff must suspect are the generic elements of wrongdoing, causation, and harm. (*Ibid.*) A plaintiff who suspects that he or she has suffered an injury caused by the wrongdoing of another is charged with the knowledge that a reasonable investigation would reveal, and the limitations period begins to run at that time. (*Fox*, at pp. 807-808 & fn. 2.)" (*Ovando v.*



*County of Los Angeles* (2008) 159 Cal.App.4th 42, 66.) The element of harm refers to any “appreciable and actual harm,” regardless of whether the plaintiff has reason to suspect the full extent of injury. (*Davies v. Krasna* (1975) 14 Cal.3d 502, 514; accord, *Miller v. Lakeside Village Condominium Assn.* (1991) 1 Cal.App.4th 1611, 1623.)

The facts alleged in the complaint concerning the defendants’ misconduct and Teecher’s awareness at the time of certain limited injuries compel the conclusion that, as of June 8, 2002, she had reason to believe that she was harmed, despite her failure to learn the full extent of her injuries until a later date. Teecher fails to adequately allege a basis for delayed accrual of her personal injury claims. A demurrer, however, must dispose of an entire cause of action to be sustained. (*Fremont Indem. Co. v. Fremont General Corp.* (2007) 148 Cal.App.4th 97, 119.) Each count alleged in Teecher’s complaint alleges both personal injury and damage to personal property. The grounds asserted in the general demurrers were limited to the personal injury claims and cannot dispose of the claims for property damage. We therefore conclude that the general demurrers cannot be sustained to any count in its entirety as to any defendant.

In light of our conclusion that the sustaining of the general demurrers was error, the appropriate disposition is to reverse the judgment with directions to rule on the special demurrers. (*Briscoe, supra*, 4 Cal.3d at p. 544; *Stowe v. Fritzie Hotels, Inc.* (1955) 44 Cal.2d 416, 425-426.) The court at that time may address the combining of personal injury and property damage claims in the same counts and, if appropriate, may sustain the special demurrers with leave to amend so as to allege those claims separately in separate counts. The court also may rule on the motions to strike at that time.

***DISPOSITION***

The judgment is reversed with directions to overrule the general demurrers in their entirety and to conduct further proceedings not inconsistent with the views expressed herein. Teecher is entitled to recover her costs on appeal.

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CROSKEY, J.

WE CONCUR:

KLEIN, P. J.

ALDRICH, J.